

## **REMARKS**

Claims 1-23 are pending in the Application, and all were rejected in the Office action of June 30, 2006. New claims 24-30 are added by this amendment. Claims 1, 11, 16 and 24 are independent claims. Claims 2-10, 12-15, 17-23 and 25-30 depend either directly or indirectly from independent claims 1, 11, 16 and 24, respectively. The Applicants respectfully request reconsideration of pending claims 1-23, and consideration of new claims 24-30, in light of the following remarks.

### **Amendments to the Claims**

Claims 11 and 16 have been amended to more clearly define the claimed subject matter. The Applicants respectfully submit that no new matter has been added by these amendments.

Claims 12 and 13 have been amended to be consistent with the amended wording of claim 11. The Applicants respectfully submit that no new matter has been added by these amendments.

Claims 14 and 19 have been amended to correct antecedent basis. The Applicants respectfully submit that no new matter has been added by these amendments.

### **Rejections of Claims**

Claims 1-18 were rejected under 35 U.S.C. 102(e) as being anticipated by Moles et al. (US 6,615,038, hereinafter "Moles"). The Applicants respectfully traverse the rejection.

As an initial matter, Applicant notes that the rejection listed as item 2 on page 2 of the Office action includes only claims 1-18 of the Application, while the text on pages 2-14 of the Office action addresses claims 1-23. Applicant responds below, assuming that rejection was intended to include claims 1-23.

With regard to the anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently

described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding claim 1, the Applicants respectfully submit that the Moles reference does not teach, suggest, or disclose, for example, a mobile electronic device network employing provisioning techniques for updating electronic devices, the network comprising a device server capable of dispensing at least one update; an electronic device having at least one of firmware and software, the electronic device being communicatively coupled to the device server; and an update service in the electronic device, presence of the update service in the electronic device being determinable by the network, wherein when enabled the update service indicates to the network capability of the electronic device to update at least one of firmware and software, electronic device employing the at least one update to update the at least one of firmware and software. More specifically, the Moles reference fails to teach or suggest “...an update service in the electronic device, presence of the update service in the electronic device being determinable by the network....” The Applicants respectfully submit that Moles fails to teach that the network can determine the presence of an update service in an electronic device. Instead, Applicants respectfully submit that Moles teaches a mobile station configuration server (FIG. 2, 160) comprising a mobile station update controller (FIG. 3, 305), that transmits a configuration request message to a mobile station (FIG. 2, 112), receives in response mobile station configuration data transmitted by the mobile station (FIG. 2, 112), and storing the received mobile station configuration data in a mobile station parameters file. (FIG. 3, 320; col. 3, lines 8-15; col. 6, line 53 to col. 7, line 20) Moles fails to teach that the received mobile station configuration data stored in the mobile station parameters file (FIG. 3, 320) includes any indication of the presence of an update service in the mobile station (FIG. 2, 112), or that any other means of determining the presence of an update service in the mobile station is present.

The Applicants respectfully submit that, for at least these reasons, the Moles reference fails to teach every element recited in Applicant's claim 1, and that a rejection of claim 1 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, for at least the above stated reasons, the Applicants respectfully submit that Moles fails to anticipate Applicant's claim 1, and that claim 1 is allowable over Moles. Applicants respectfully submit that claim 1 is an independent claim. Because claims 2-10 depend either directly or indirectly from claim 1, Applicants respectfully submit that claims 2-10 are allowable over the Moles, as well. Therefore, the Applicants respectfully request that the rejection of claims 1-10 under 35 U.S.C. §102(e), be withdrawn.

Regarding amended claim 11, the Applicants respectfully submit that the Moles reference does not teach, suggest, or disclose, for example, a mobile electronic device network adapted to update electronic devices and perform over-the-air number assignment module parameter provisioning, the network comprising an electronic device comprising one of firmware and software, the electronic device also comprising number assignment module parameters, the electronic device being communicatively coupled to at least one server; and wherein presence of support for at least one of a firmware update service option and a software update service option in the electronic device is determinable by the network, wherein when enabled, the presence of support for the at least one of a firmware update service option and a software update service option indicates to the network that the electronic device is capable of updating one of firmware and software, wherein the electronic device is adapted to communicate the presence of support for the one of the firmware update service option and software update service option to the network, and wherein the electronic device is also adapted to communicate device specifications to the network when the network attempts to provision the number assignment module parameters. More specifically, the Moles reference fails to teach or suggest "...presence of support for at least one of a firmware update service option and a software update service option in the electronic device is determinable by the network...." Applicants respectfully submit that

Moles fails to teach anything regarding service options and anything regarding the use of service options. The Applicants respectfully submit that the existence and use of service options is well known by those of skill in the relevant art. For example, the use of service options numbers 18 and 19 for the over-the-air parameter administration (OTAPA) service option is explained in publicly available EIA/TIA document IS-683, a copy of which is submitted with and listed on the PTO/SB/08A and Information Disclosure Statement that accompany this response. A list of assigned service option numbers for use in CDMA2000 is shown, for example, in section 3 of publicly available document 3<sup>rd</sup> Generation Partnership Project (3GPP2) document C.R1001-A 2.0, publication date July 14, 2000, a copy of which is submitted with and listed on the PTO/SB/08A and Information Disclosure Statement that accompany this response. However, the Applicants are unaware of any reference available at the time the invention was made, including Moles, that teaches the use of a firmware or a software update service option, as recited in Applicant's claim 11. Instead, Moles teaches a mobile station (FIG. 2, 112) that receives a configuration request message from a network, and that responds by sending to the network mobile station configuration data. (FIG. 3, 320; col. 3, lines 8-15; col. 6, line 53 to col. 7, line 20)

In addition, Moles fails to teach "...when enabled, the presence of support for the at least one of a firmware update service option and a software update service option indicates to the network that the electronic device is capable of updating one of firmware and software." Moles make no mention of enabling a service option. Moles also fails to teach that the received mobile station sends data to the network that includes any indication of the presence in a mobile station of support for a service option of any kind, let alone a firmware update or software update service option.

The Applicants respectfully submit that, for at least these reasons, the Moles reference fails to teach every element recited in Applicant's amended claim 11, and that a rejection of claim 11 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, for at least the above stated reasons, the Applicants respectfully submit that Moles fails to anticipate Applicant's amended claim 11, and that claim 11 is allowable over Moles. Applicants respectfully submit that claim 11 is an independent claim. Because claims 12-15 depend either directly or indirectly from claim 11, Applicants respectfully submit that claims 12-15 are allowable over Moles, as well. Therefore, the Applicants respectfully request that the rejection of claims 11-15 under 35 U.S.C. §102(e), be withdrawn.

Regarding amended claim 16, the Applicants respectfully submit that the Moles reference does not teach, suggest, or disclose, for example, a method of updating software in a wireless communication device in a wireless network, the method comprising determining a value of one of a firmware update service option number and a software update service option number in the wireless communication device by the wireless network; and downloading one of a firmware update and a software update from a server in the wireless network, if one of the firmware update service option number and the software update service option number is determined to have a predetermined value. More specifically, the Moles reference fails to teach or suggest "...determining a value of one of a firmware update service option number and a software update service option number in the wireless communication device by the wireless network...." Applicants respectfully submit that Moles fails to teach anything regarding service options and anything regarding the use of service options. The Applicants respectfully submit that the existence and use of service option values/numbers/codes is well known by those of skill in the relevant art. For example, the use of service options (service options 18 and 19) for over-the-air parameter administration (OTAPA) is explained in EIA/TIA document IS-683, a copy of which is submitted with and listed on the PTO/SB/08A and Information Disclosure Statement that accompany this response. A list of assigned service option numbers for use in CDMA2000 is shown, for example, in section 3 of publicly available document 3<sup>rd</sup> Generation Partnership Project (3GPP2) document C.R1001-A 2.0, publication date July 14, 2000, a copy of which is submitted with and listed on the PTO/SB/08A and Information Disclosure Statement that

accompany this response. However, the Applicants are unaware of any reference, including Moles, that teaches the use of a firmware or a software update service option, as recited in Applicant's claim 16.

In addition, the Applicants respectfully submit that Moles fails to teach or suggest "...downloading one of a firmware update and a software update from a server in the wireless network, if one of the firmware update service option number and the software update service option number is determined to have a predetermined value." As discussed above, Moles is silent with respect to the use of service option numbers in an electronic device, let alone a means for a network to determine such values. Instead, Moles teaches a mobile station (FIG. 2, 112) that receives a configuration request message from a network, and that responds by sending to the network mobile station configuration data. (FIG. 3, 320; col. 3, lines 8-15; col. 6, line 53 to col. 7, line 20) Moles fails to teach that the received mobile station configuration data includes a service option number, let alone downloading a firmware or software update based upon a determination that a service option number has a predetermined value.

The Applicants respectfully submit that, for at least these reasons, the Moles reference fails to teach every element recited in Applicant's amended claim 16, and that a rejection of claim 16 under 35 U.S.C. §102(e) cannot be maintained.

Therefore, for at least the reasons set forth above, the Applicants respectfully submit that Moles fails to anticipate Applicant's amended claim 16, and that claim 16 is allowable over Moles. Applicants respectfully submit that claim 16 is an independent claim. Because claims 17-23 depend either directly or indirectly from claim 17, Applicants respectfully submit that claims 17-23 are allowable over Moles, as well. Therefore, the Applicants respectfully request that the rejection of claims 16-23 under 35 U.S.C. §102(e), be withdrawn.

### **Newly Added Claims**

The Applicants have added new claims 24-30, which are similar in many respects to claims 1-23. New claim 24 is an independent claim, while new claims 25-30 dependent directly or indirectly from claim 24. Support for new claims 24-30 may be found, for example, in Figures 1, 2, and 3, and in paragraphs [0036], [0056], [0057], [0066], [0077] of the Application. Applicants respectfully submit that these new claims do not add new matter.

### **Conclusion**

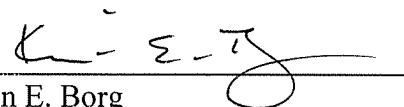
The Applicants believe that all of claims 1-30 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicants invite the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

The Commissioner is hereby authorized to charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 13-0017.

Respectfully submitted,

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Kevin E. Borg  
Reg. No. 51,486

KEB  
McANDREWS, HELD & MALLOY, LTD.  
500 West Madison Street  
Suite 3400  
Chicago, Illinois 60661  
Phone (312) 775-8000  
Facsimile (312) 775-8100